

50013 Cisen
P-I

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-220224

DATE: December 17, 1985

MATTER OF: Kings Point Mfg. Co., Inc.

DIGEST:

1. Contention that agency improperly decided to use multiyear contracting and to solicit option quantities under solicitation is denied. Where agency has established reasonable basis for using multiyear contracting and soliciting option quantities, the protester's disagreement with the agency's conclusions does not establish that the determination was improper.
2. Contention that agency should have included an economic price adjustment clause in solicitation is denied because use of such a clause is discretionary with agency and no abuse of discretion has been shown.

Kings Point Mfg. Co., Inc. (Kings Point), protests against request for proposals (RFP) No. F09603-85-R-1589, a multiyear solicitation for cargo nets issued by the United States Air Force. The solicitation's multiyear contracting format required that offerors submit prices for 2 program years and for options available in each program year. The RFP further advised that proposals were to be evaluated on a multiyear basis only. Kings Point contends that the contract format is improper because it allegedly will restrict competition and will not permit offerors to submit their lowest possible price. Kings Point argues that the RFP should be modified in any one of the following ways: (1) provide for a single-year procurement instead of multiyear; (2) include an Economic Price Adjustment (EPA) clause; or (3) exclude the second year option.

We deny the protest.

Kings Point contends that future market prices for cargo nets cannot be predicted because the nylon webbing of the nets is a petroleum-based product and historically there have been great fluctuations in petroleum prices. It has submitted statements from suppliers indicating that they

034042

will make price commitments for only limited periods of time. Kings Point notes, however, that this contract could extend through October 1987. It argues that, consequently, offerors are unable to make a realistic estimate of prices for these nets beyond 6 months.

Kings Point contends that, since realistic estimates cannot be made, the multiyear format will require offerors to anticipate price increases for supplies in their prices to the government and, consequently, the government will not obtain the lowest fixed price possible. Kings Point further states that the second year option quantity constitutes a significant part of the total quantity under the contract and, since the contractor is forced to consider potential increases in costs in its option price, there is an increased risk that the government will not award that option quantity because the price offered will be considered unreasonable. Kings Point suggests that any one of its three proposed modifications to the RFP would minimize the "uncontrollable risk of acquiring materials at fixed cost over the life of this contract."

It is well established that the expression of the government's requirements in a solicitation must reflect the actual and legitimate minimum needs of the government. Sentinel Electronics, Inc., B-212770, Dec. 20, 1983, 84-1 C.P.D. ¶ 5. We think this principle necessarily applies to the contracting format used to purchase the quantities of items which an agency has determined to be necessary. Here, the Air Force maintains that a multiyear contract with options represents its actual and legitimate needs.

In this regard, the contracting agency has the primary responsibility for determining its minimum needs and the method of accommodating them, and our Office will not question an agency's decision concerning the best method of accommodating its minimum needs absent clear evidence that those decisions are arbitrary or unreasonable. ASC Pacific Inc., B-217188, May 3, 1985, 85-1 C.P.D. ¶ 497. We therefore will uphold an agency's rationally based decision to procure on a multiyear basis and/or include option requirements unless the protester shows that the decision is clearly unreasonable. A mere difference of opinion between the protester and the agency concerning the agency's needs is not sufficient to upset an agency's determination. Hydro-Dredge Corporation, B-215873, Feb. 4, 1985, 85-1 C.P.D. ¶ 132.

Kings Point has failed to establish as arbitrary the Air Force's determination that multiyear contracting for cargo nets is advantageous. Consistent with the procedures for the use of multiyear contracting under Federal Acquisition Regulation (FAR), § 17.103-1(a) (Federal Acquisition Circular (FAC) 84-5, April 1, 1985), the contracting officer determined that the use of such a contract would result in reduced total costs under the contract and that the Air Force estimates of both the cost of the contract and the anticipated cost avoidance through the use of a multiyear contract were realistic. The Air Force explains that it expects reduced total costs under the multiyear contracting approach because a larger quantity of nets will be purchased from one firm, thus establishing a longer production run for that firm. The Air Force asserts that a longer contract period will permit the contractor to achieve savings because the firm can stabilize its work force, reduce its startup and phaseout costs, and make capital investment improvements. The Air Force expects that these benefits will permit offerors to submit lower prices than would be submitted under a solicitation for 1 year's requirements. The Air Force also states that it was able to make a realistic estimate of the cost of the contract because its review of the economic market indicated that the prices for cargo nets are reasonably predictable for the duration of the contract. As discussed above, Kings Point disagrees with the agency's determination on the basis of its analysis of the market for cargo nets. However, a difference of opinion between the protester and the agency does not establish that the Air Force's determination to use multiyear contracting was improper. Hydro-Dredge Corporation, B-215873, supra.

Kings Point also has failed to establish as arbitrary the Air Force's determination under FAR, 48 C.F.R. § 17.202 (1984), that including option requirements for both program years was in the best interest of the government. The contracting officer decided to include the option requirements for the following reasons: (1) the items are not readily available on the open market for acquisition by the government; (2) the option quantities are known firm requirements for which funds are not available at time of award and (3) market prices for cargo nets are not expected to change substantially but, in the event an offeror does expect substantial changes, the options within the 2 program years can be priced independently and, therefore, an offeror may reflect any potential increase in production costs in a higher quote for the option quantities. The Air Force reports that the cargo nets are often damaged in the field and the procurement history of these nets shows that

quantities greater than previous base year quantities solicited have been purchased the last 5 years. We have stated that, under the FAR, a contracting officer may include options in a contract when it is in the government's best interests. See International Business Investments, Inc., 63 Comp. Gen. 463 (1984), 84-1 C.P.D. ¶ 693. Again, Kings Point essentially disagrees with the Air Force's determinations that the future market prices are reasonably foreseeable and that the provision for option quantities under the RFP is in the government's best interests. We therefore cannot conclude from the record that the Air Force's decision was improper.

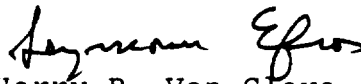
As to the need for an EPA clause, it is the offeror's responsibility in offering a fixed-price contract to project costs and to include in the contract price a factor covering any projected cost increases. Risk is inherent in most types of contracts, but especially in multiyear, fixed-price contracts such as the one involved here, and offerors are expected to allow for that risk in computing their offers. See Palmetto Enterprises, 57 Comp. Gen. 271 (1978), 78-1 C.P.D. ¶ 116. The basic purpose of an EPA clause is to protect the government in case of a decrease in the cost of labor or material and the contractor in the event of an increase. Galaxy Custodial Services, Inc., et al., B-215738, et al., June 10, 1985, 64 Comp. Gen. _____, 85-1 C.P.D. ¶ 658; see FAR, § 16.203-2 (FAC 84-5, April 1, 1985). However, the use of an EPA clause is discretionary with the procuring activity, and we will only question a decision regarding use of an EPA clause where it is shown to be arbitrary or capricious. Sentinel Electronics, Inc., B-212770, supra; Barker & Williamson, B-208236, Nov. 17, 1982, 82-2 C.P.D. ¶ 454.

In making the determination of whether an EPA clause was appropriate for this solicitation, the contracting officer considered, among other factors, knowledge of the items to be acquired, awareness of existing market conditions, the state of the economy, and the state of the petroleum market. The contracting officer concluded that there was no reason to anticipate change in market or labor conditions necessitating inclusion of an EPA clause. The Air Force states that this conclusion was supported by discussions held after the issuance of this solicitation by the contracting officer with two firms which subsequently submitted offers on this contract. The contracting officer reports that one firm said that it had no difficulty obtaining vendor quotes for material for the term of the contract and the other firm said that the economic risk in proposing on those quotes did not exceed the risks normally present in this type of business operation.

Although Kings Point challenges the credibility of one of the firms surveyed, the agency's account of what the other firm said and the agency's view of the stability of the market for these supplies, in our view, the agency's consideration of relevant economic factors and its discussions with two interested firms provided a reasonable basis for its decision. Since the use of an EPA clause is discretionary, we cannot find that the Air Force acted improperly by not including an EPA clause.

We also note that we have been advised by the Air Force that four offers were received in response to this solicitation and that the low offer was determined to be reasonable. This indicates that, contrary to Kings Point's assertions, firms apparently were able to forecast their costs for this contract and were not restricted by the contract format from submitting an offer.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel